

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**June 22, 2005**

DIVISION ONE

Court convened at 9:00 a.m.

Present: Spencer, P.J., Mallano, J., Boren, P.J. (Assigned) and P. Gonzalez, Deputy Clerk.

B182559     Diana D. v. SCLA (DCFS, rpi)

Argument waived, cause submitted.

Each of the following:

B177296     Popovich v. Denny's Restaurant

B177898     Curiel v. POD et al.

Continued to June 27, 2005.

B177898     Ruekema et al. v. Hawkins et al.

Continued to August 24, 2005.

B170771     Marcia Mosebay

v.

Mony Life Insurance Co., et al.

Merits:

Argued by Gregory L. Doll for appellant and by Peter H. Mason for respondents. Cause submitted.

Boren, P.J. (Assigned), leaves the bench.

DIVISION ONE (Continued)

Vogel (Miriam A.), J. and Rothschild, J. assume the bench.

B172447      Galan Alexander  
                  v.  
                  City of Compton

Merits:

Argued by Jorje Chica for respondent, and argument waived, by appellant, Galan Alexander. Cause submitted.

B175938      Dorene Lines-Walderp  
                  v.  
                  Los Angeles Unified School District

Merits:

Argued by Sergio Bent for appellant and by John P. DeGomez for respondent. Cause submitted.

Rothchild, J., leaves the bench.

B167052      Barry S. Phillips, CPA  
                  v.  
                  Huntington Memorial Hospital

Merits:

Argued by Janice Mazur for appellant and by Philip Ewen for respondent. Cause submitted.

B180814      Huntington Memorial Hospital  
                  v.  
                  Superior Court, Los Angeles County  
                  (Irene Mutuc et al., r.p.i.)

Merits:

Argued by Philip Ewen for petitioner and by Joseph Antonelli for real parties in interest. Cause submitted.

Mallano, J., leaves the bench.

DIVISION ONE (Continued)

Rothchild, J. returns to the bench.

B176722     Alvin Daniels  
               v.  
               Los Angeles Unified School District et al.

Merits:  
Argued by James T. Stroud for appellant and by Sergio Bent for  
respondents. Cause submitted.

B176863     Barton Properties, Inc.  
               v.  
               City of Los Angeles

Merits:  
Argued by William J. Davis for appellant and by Terry P. Kaufmann  
Macias for respondent. Cause submitted.

Rothchild, J. leaves the bench.

Mallano, J. returns to the bench.

B164727     Margarita Garcia et al.  
               v.  
               Department of Transportation

Merits:  
Argued by Douglas F. Galanter for appellants and by Robert B. Schoenburg  
for respondent. Cause submitted.

Rothchild, J. returns to the bench.

Mallano, J. leaves the bench.

June 22, 2005 (Continued)

## DIVISION ONE (Continued)

B171981      Finova Capital Corporation  
v.  
Saint Damian Pharmacy, Inc.

Merits:  
Argued by Timothy D. Principe for appellant and by Ted A. Galfin for respondent. Cause submitted.

Vogel, J. leaves the bench.

Mallano, J. returns to the bench.

B176350      Robert Bisno  
v.  
Santa Monica Rent Control Board

Merits:  
Argued by Allan Abshez for appellant and by Michaelyn Jones for respondents. Cause submitted.

Court adjourned.

B174381 People (Not for Publication)  
v.  
Cole

The judgment is affirmed.

Mallano, J., Acting P.J.

I concur: Rothschild, J.  
I concur in judgment only: Vogel (Miriam A.)

## DIVISION ONE (Continued)

B176867 People (Not for Publication)  
v.  
Alamouti

The judgment is modified to strike one of the two-year prison terms imposed under Penal Code sections 186.11, subdivision (a)(3) and 12022.6, thereby reflecting a single sentence enhancement of two years based on the findings under these statutes, and the matter is remanded for resentencing. As modified, the judgment is affirmed.

Mallano, J.

We concur: Spencer, P.J.  
Vogel (Miriam A.), J.

B174483      People  
v.  
Eynon

(Not for Publication)

The judgment is affirmed. The abstract of judgment is to be corrected to reflect that in count 26 defendant was convicted of penetration with a foreign object in violation of Penal Code section 289, subdivision (a). The trial court is directed to forward a copy of the corrected abstract of judgment to the Department of Corrections.

Mallano, J.

We concur: Spencer, P.J.

B178563      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
S. W., et al.

The order of September 30, 2004, is affirmed.

Mallano, J.

We concur: Spencer, P.J.  
Vogel (Miriam A.), J.

June 22, 2005 (Continued)

## DIVISION ONE (Continued)

B173360      Motyczka      (Not for Publication)  
v.  
Pessamoza

The order under review is affirmed.

Mallano, J., Acting P.J.

I concur:       Rothschild, J.

I concur in the judgment only: Vogel (Miriam A.),

B178724      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Cynthia R. et al.

The order denying Mother's section 388 petition for modification and the order terminating parental rights to Marisol and Hector are affirmed.

Mallano, J.

We concur: Spencer, P.J.  
Vogel (Miriam A.), J.

### DIVISION THREE

B166475      Daimlerchrysler Services North America LLC    (Not for Publication)  
v.  
Zurich American Insurance Company  
Marsh, Inc.

The judgment between Chrysler and Zurich is reversed with directions to the trial court to vacate the appraisal award and order a new appraisal limited to determining the cost to repair the damage to Shoppers World apart from costs necessitated by new building code requirements, the diminution in value caused by the damage, the loss of retail income during the period of restoration, and the cost on temporary repairs. The trial court is directed to enter a judgment between Chrysler and Zurich awarding damages and prejudgment interest to Chrysler based on the amounts determined by the new appraisal award, determine the prevailing party, and award costs claimed after entry of judgment as appropriate. The judgment between Zurich and Marsh is affirmed on the counts for breach of fiduciary duty and constructive fraud and reversed on the count for implied contractual indemnity with directions to the trial court to enter a judgment in favor of Marsh for with on the count for implied contractual indemnity. Chrysler and Marsh are entitled to recover costs on appeal.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

## DIVISION FOUR

B174653 People (Not for Publication)  
v.  
Flores

The order revoking probation is affirmed, the sentence is reversed and the matter is remanded for resentencing.

Hastings, J.

We concur: Epstein, P.J.  
Curry, J.

June 22, 2005 (Continued)

## DIVISION FOUR (Continued)

B176100      People                                  (Not for Publication)  
v.  
Ballard and Casey

The judgments are affirmed.

Willhite, J.

We concur: Epstein, P.J.  
Curry, J.

B170416 People (Not for Publication)  
v.  
Medrano

The judgment is affirmed.

Hastings, J.

We concur: Epstein, P.J.  
Willhite, J.

B170351 People  
v.  
Nava

Filed order denying petition for rehearing.



June 22, 2005 (Continued)

DIVISION FIVE

B173679 People (Not for Publication)  
v.  
Sylas Brownridge et al

The judgment is affirmed.

Kriegler, J.

We concur:   Turner, P.J.  
                      Armstrong, J.

B173236 Jon Anderson et al. (Not for Publication)  
v.  
Speedee Oil Change Systems Inc. et al

The judgment entered on December 8, 2003 and the January 7, 2004 order awarding attorney fees and costs are reversed. Upon issuance of the remittitur, the attorney fee motion filed on December 12, 2003, is to be denied and all costs sought under the cost memorandum filed on the same day are ordered stricken. Plaintiffs, Jon Andersen, Jerry Beezley, Kathleen Beezley, M.G. Han, H. C. Han, Jeff Howe, Sam Lau, Christopher Mack, Beldoon Corporation, Donald Almen and Belva Almen, are to recover their costs on appeal, jointly and severally from defendants, Speedee Oil Changes Systems, Inc., NoCal, Inc., Gary Copp, and Kevin Bennett.

Turner, P.J.

We concur: Mosk, J.  
Kriegler, J.

June 22, 2005 (Continued)

## DIVISION FIVE (Continued)

B176678 People (Not for Publication)

V.

Charles Edwards

The judgment is affirmed.

Kriegler, J.

We concur: Turner, P.J.

Armstrong, J.

B169590 Vehicular Technologies Corp. (Not for Publication)

V.

Titan Wheel International Inc. et al

The judgment is affirmed. Respondent to recover costs appeal.

Armstrong, J.

We concur: Turner, P.J.

Mosk, J.

B179274 Los Angeles County, D.C.S. (Not for Publication)

V.

Anthony W.

The judgment is affirmed.

Mosk, J.

We concur:   Turner, P.J.

Kriegler, J.

DIVISION SIX

B172770      Karen K. et al.      (Not for Publication)

v.

Jean R.

John F. Sachs

The order awarding attorney's fees and costs to respondent Sachs is reversed and the case is remanded with directions that the trial court calculate those fees based on a rate of \$65 per hour, rather than \$210 per hour. The order awarding attorney's fees and costs to respondent Karen K. is reversed and the case is remanded for a new hearing on the appropriate amount of fees. Costs on appeal are awarded to appellant and against respondents Sachs and Karen K. Respondent County of San Luis Obispo shall bear its own costs.

Coffee, J.

We concur:   Gilbert, P.J.  
                     Perren, J.

B172385      People      (Certified for Partial Publication)

v.

Banuelos

The judgment of conviction is affirmed. The true findings on the prior conviction allegations under sections 667, subdivision (a) and 1170.12 are reversed and the sentence is vacated. The case is remanded for a retrial on the prior conviction allegations if the People so elect, or for a new sentencing hearing if the People do not go forward on those allegations.

Coffee, J.

We concur:   Gilbert, P.J.  
                     Perren, J.

DIVISION SIX (Continued)

B177926      Mothershead                      (Not for Publication)  
                 v.  
                 Mothershead

The judgment is affirmed. The parties shall bear their own costs on appeal.

Yegan, Acting P.J.

We concur:   Coffee, J.  
                 Perren, J.

B175493      People                                      (Not for Publication)  
                 v.  
                 Gabriel J. Estrada

The judgment is affirmed.

Yegan, Acting P.J.

We concur:   Coffee, J.  
                 Perren, J.

B177343      In re Jackson                              (Not for Publication)  
                 on  
                 Habeas Corpus

The trial court's order granting the petition for writ of habeas corpus is reversed. This court's order dated September 8, 2004, staying the trial court's order, shall dissolve upon issuance of the remittitur.

Yegan, J.

We concur:   Gilbert, P.J.  
                 Coffee, J.

June 22, 2005 (Continued)

DIVISION EIGHT

B177111      Alberto Pinero                      (Certified for Publication)

v.

Specialty Restaurants Corporation

The judgment is affirmed. SRC is to recover its costs on appeal.

Boland, J.

We concur:    Cooper, P.J.  
                     Rubin, J.